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10 **UNITED STATES DISTRICT COURT**
11
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 NICOLE MOSS, an individual; and) CASE NO. C06-6356
14 DISABILITY RIGHTS, ENFORCEMENT,)
15 EDUCATION, SERVICES: HELPING)
16 YOU HELP OTHERS, a California public)
17 benefit corporation)
18 Plaintiffs,)
19 vs.)
20)
21)
22)
23)
24)
25)
26)
27)
28)

ANSWER TO PLAINTIFF'S COMPLAINT
FOR INJUNCTIVE RELIEF AND
DAMAGES

JURY TRIAL REQUESTED

MANILA BAY CUISINE; LANDMARK)
TOWNE CENTER, LLC, a Delaware)
limited liability company; AGLOS, LLC, a)
Delaware limited liability company;)
DINKY, LLC, a Delaware limited liability)
company; GF LIBERTY, LLC, a Delaware)
limited liability company; CRIM SUN,)
INC., a California corporation,)

Defendants.)

Defendants Landmark Towne Center, LLC; Aglos, LLC; Dinky, LLC and; GF Liberty, LLC (hereinafter collectively referred to as “defendants”) hereby generally deny each and every allegation in plaintiffs Nicole Moss (“Moss”) and the Disability Rights, Enforcement, Education, Services: Helping You Help Others (“DREES”) (sometimes collectively referred to as “plaintiffs”) complaint filed on October 11, 2006 (“complaint”), and specifically deny that plaintiffs have been damaged in any sum whatsoever and further specifically deny that plaintiffs are entitled to any relief in any form whatsoever by reason of any act or omission of these answering defendants, and further responds to plaintiffs’ complaint as follows:

1. Answering paragraph 1 of the complaint, defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning plaintiff Moss' physical condition, and on that basis deny those allegations, and deny each and every remaining allegation of this paragraph.

2. Answering paragraph 2 of the complaint, defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning plaintiff Moss' physical condition, and on that basis deny those allegations, and deny each and every remaining allegation of this paragraph.

JURIS DICTION AND VENUE

3. Answering paragraph 3 of the complaint, defendants admit that this Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, but deny that defendants have violated any applicable law or statute, including but not limited to the Americans with Disabilities Act, 42 U.S.C. 12101, et seq., Cal. Health & Safety Code § 19955, et seq., Title 24 of the California Code of Regulations, and the California Unruh Act, Cal. Civ. Code §§ 51, 54 and 54.1.

4. Defendant admits the allegations contained in paragraph 4 of the complaint.

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PARTIES

5. Answering paragraph 5 of the complaint, defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning plaintiff Moss' physical condition, and on that basis deny those allegations, and deny each and every remaining allegation of this paragraph.

6. Answering paragraph 6 of the complaint, defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning patron plaintiff DREES' membership, and on that basis deny those allegations, and deny each and every remaining allegation of this paragraph.

7. Answering paragraph 7 of the complaint, defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning patronage of Manila Bay Cuisine by DREES members, and on that basis deny those allegations, and deny each and every remaining allegation of this paragraph.

8. Answering paragraph 8 of the complaint, defendants admit that they own the subject shopping center and that the shopping center and restaurant are public accommodations under the referenced statutes, defendants further admit that they lease premises to Manila Bay Cuisine located at/near 1230 El Camino Real #J, San Bruno, California, however, defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in said paragraph, and on that basis deny the remaining allegations contained in said paragraph.

9. Answering paragraph 9 of the complaint, defendants admit that they own the subject shopping center and that the shopping center and restaurant are public accommodations under the referenced statutes, defendants further admit that they lease premises to Manila Bay Cuisine, however, defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in said paragraph, and on that basis deny the remaining allegations contained in said paragraph.

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10. Answering paragraph 10 of the complaint, defendants admit that the referenced regulation speaks for itself, and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in said paragraph, and on that basis deny the remaining allegations contained in said paragraph. As a further answer to this paragraph, defendant deny that it has violated any applicable law or statute.

PRELIMINARY FACTUAL ALLEGATIONS

11. Answering paragraph 11 of the complaint, defendants admit that Manila Bay Cuisine is located at/near 1230 El Camino Real #J, San Bruno, California, however, defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in said paragraph, and on that basis deny the remaining allegations contained in said paragraph.

12. Answering paragraph 12 of the complaint, defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning plaintiff Moss' membership in DREES, and on that basis deny those allegations, and deny each and every remaining allegation of this paragraph.

13. Answering paragraph 13 of the complaint, defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning defendant Manila Bay Cuisine's advertising regarding accessibility, and on that basis deny those allegations, and deny each and every remaining allegation of this paragraph.

14. Answering paragraphs 14, 15, 16, 17, 18 and 19 of the complaint, defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning plaintiff Moss' patronage of Manila Bay Cuisine, and on that basis deny those allegations, and deny each and every remaining allegation of those paragraphs.

15. Answering paragraph 20 of the complaint, defendants deny that plaintiff Moss wrote to defendants as the landlord. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning plaintiff Moss' correspondence with

1 Manila Bay Cuisine, and on that basis deny those allegations, and deny each and every
2 remaining allegation of this paragraph.

3 16. Answering paragraph 21 of the complaint, defendants lack knowledge or
4 information sufficient to form a belief as to the truth of the allegations concerning plaintiff
5 Moss' patronage of Manila Bay Cuisine, and on that basis deny those allegations, and deny
6 each and every remaining allegation of this paragraph.

7 17. Answering paragraphs 22 and 23 of the complaint, defendants lack knowledge
8 or information sufficient to form a belief as to the truth of the allegations concerning the
9 alleged "architectural barriers" encountered, and on that basis deny those allegations, and deny
10 each and every remaining allegation of those paragraphs.

11 18. Answering paragraph 24 of the complaint, defendants deny that plaintiff Moss
12 wrote to defendants as the landlord and deny receiving the letters attached to the complaint as
13 Exhibit A, said letters being addressed solely to Manila Bay Cuisine. Defendants lack
14 knowledge or information sufficient to form a belief as to the truth of the allegations
15 concerning plaintiff Moss' correspondence with Manila Bay Cuisine, and on that basis deny
16 those allegations, and deny each and every remaining allegation of this paragraph.

17 19. Defendants deny the allegations contained in paragraphs 26, 27, 28 and 29.

18 20. Answering paragraph 30 of the complaint, defendants lack knowledge or
19 information sufficient to form a belief as to the truth of the allegations concerning alterations
20 of Manila Bay Cuisine, and on that basis deny those allegations, and deny each and every
21 remaining allegation of this paragraph.

22 21. Answering paragraphs 31, 32, 33, 34, 35 and 36 of the complaint, defendants
23 admit that the referenced statutes speak for themselves, and lack knowledge or information
24 sufficient to form a belief as to the truth of the remaining allegations contained in said
25 paragraphs, and on that basis deny the remaining allegations contained in those paragraphs. As
26 a further answer to these paragraphs, defendants deny that they have violated any applicable
27 law or statute.

1 22. Answering paragraph 37 of the complaint, defendants lack knowledge or
 2 information sufficient to form a belief as to the truth of the allegations concerning plaintiffs
 3 Moss and DREES, and on that basis deny those allegations, and deny each and every
 4 remaining allegation of this paragraph.

5 **FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC
 6 ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH DISABILITY
 7 ACT OF 1990 (42 U.S.C. §§ 12101, *et seq.*)**

8 23. Answering paragraph 38 of the complaint, defendants incorporate their
 9 responses to paragraphs 1 through 37 as though fully set forth herein.

10 24. Answering paragraphs 39, 40, 41, 42, 43, 44, 45, 46, 47, 48 and 49 of the
 11 compliant defendants admit that the referenced statutes speak for themselves, and lack
 12 knowledge or information sufficient to form a belief as to the truth of the remaining allegations
 13 contained in said paragraphs, and on that basis deny the remaining allegations contained in
 14 those paragraphs. As a further answer to these paragraphs, defendants deny that they have
 15 violated any applicable law or statute.

16 **SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS IN
 17 VIOLATION OF CALIFORNIA CIVIL CODE §§ 54, 54.1 AND 54.3, *ET SEQ.***

18 25. Answering paragraph 50 of the complaint, defendants incorporate their
 19 responses to paragraphs 1 through 49 as though fully set forth herein.

20 26. Answering paragraphs 51, 52, 53, 54, 55, 56, 57 and 58 of the complaint,
 21 defendants admit that the referenced statutes speak for themselves, and lack knowledge or
 22 information sufficient to form a belief as to the truth of the remaining allegations contained in
 23 said paragraphs, and on that basis deny the remaining allegations contained in those
 24 paragraphs. As a further answer to these paragraphs, defendants deny that they have violated
 25 any applicable law or statute.

26 **THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE SANITARY
 27 FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE §§ 19955, *ET SEQ.***

28 27. Answering paragraph 59 of the complaint, defendants incorporate their
 29 responses to paragraphs 1 through 58 as though fully set forth herein.

1 28. Answering paragraphs 60, 61, 62, 63, 64, 65 and 66 of the complaint,
 2 defendants admit that the referenced statutes speak for themselves, and lack knowledge or
 3 information sufficient to form a belief as to the truth of the remaining allegations contained in
 4 said paragraphs, and on that basis deny the remaining allegations contained in those
 5 paragraphs. As a further answer to these paragraphs, defendants deny that they have violated
 6 any applicable law or statute.

7 **FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO FULL AND EQUAL
 8 ACCOMODATIONS, ADVANTAGES, FACILITIES, PRIVILEGES AND/OR
 SERVICES IN VIOLATION OF CALIFORNIA CIVIL CODE §§ 51, ET SEQ.
 (THE UNRUH CIVIL RIGHTS ACT)**

9 29. Answering paragraph 67 of the complaint, defendants incorporate their
 10 responses to paragraphs 1 through 66 as though fully set forth herein.

11 30. Answering paragraphs 68, 69, 70 and 71 of the complaint, defendants admit
 12 that the referenced statutes speak for themselves, and lack knowledge or information sufficient
 13 to form a belief as to the truth of the remaining allegations contained in said paragraphs, and
 14 on that basis deny the remaining allegations contained in those paragraphs. As a further
 15 answer to these paragraphs, defendants deny that they have violated any applicable law or
 16 statute.

17 **PRAYER FOR RELIEF**

18 The remaining paragraphs of the complaint contain plaintiffs' prayer for relief to which
 19 no response is required. To the extent a response may be required, defendants deny that
 20 plaintiffs are entitled to the relief sough in these paragraphs.

21 **AFFIRMATIVE DEFENSES**

22 AS A FIRST AFFIRMATIVE DEFENSE, defendants are informed and believe that
 23 plaintiff has failed to state facts sufficient to constitute a cause of action against defendant.

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1 AS A SECOND AFFIRMATIVE DEFENSE, defendants are informed and believe
2 that each cause of action is barred by the applicable statute of limitations including, but not
3 limited to: California Civil Procedure Code Sections 337, 338, 339, 340, 340.6, 343, 42
4 U.S.C. § 12101 et seq., Cal. Civ. Code § 510, et seq.

5 AS A THIRD AFFIRMATIVE DEFENSE, defendants are informed and believe that
6 all alleged acts or omissions were privileged by, among other things, Cal. Civ. Code § 47.

7 AS A FOURTH AFFIRMATIVE DEFENSE, defendants are informed and believe
8 that plaintiffs are guilty of negligence which proximately caused and/or contributed to their
9 damages, if any.

10 AS A FIFTH AFFIRMATIVE DEFENSE, defendants are informed and believe that to
11 the extent that plaintiffs have or will suffer any damages, which defendants deny, said
12 damages were or will be caused solely or proximately by the conduct of plaintiffs, other parties
13 and third parties who are not parties in this action.

14 AS A SIXTH AFFIRMATIVE DEFENSE, defendants are informed and believe that
15 plaintiffs have failed to mitigate their damages, if any.

16 AS A SEVENTH AFFIRMATIVE DEFENSE, defendants are informed and believe
17 that plaintiffs are guilty of laches in failing to timely assert their claims.

18 AS AN EIGHTH AFFIRMATIVE DEFENSE, defendants are informed and believe
19 that plaintiffs are estopped by their acts, omissions and representations from asserting the
20 claims in the complaint.

21 AS A NINTH AFFIRMATIVE DEFENSE, defendants are informed and believe that
22 plaintiffs ratified the conduct which is the subject matter of the complaint.

23 AS A TENTH AFFIRMATIVE DEFENSE, defendants are informed and believe that
24 plaintiffs did not rely on any act or omission of defendants.

25 AS AN ELEVENTH AFFIRMATIVE DEFENSE, defendants are informed and
26 believe that plaintiffs have released and waived the claims alleged in the complaint against
27 defendants by, including but not limited to, their acts, omissions and representations.

1 AS A TWELFTH AFFIRMATIVE DEFENSE, defendants are informed and believe
 2 that plaintiffs had knowledge of, and assumed the risks incident to the matters alleged in the
 3 complaint.

4 AS A THIRTEENTH AFFIRMATIVE DEFENSE, defendants are informed and
 5 believe that if any wrongful conduct was engaged in by other parties and/or unnamed third
 6 parties, plaintiffs directly or indirectly acted in concert with those other parties or persons or
 7 knowingly ratified or approved such conduct and are therefore precluded from recovering
 8 under the doctrine of in pari delicto.

9 AS A FOURTEENTH AFFIRMATIVE DEFENSE, defendants are informed and
 10 believe that plaintiffs are barred from asserting their claims and are guilty of unclean hands by
 11 virtue of their acts and omissions and the acts and omissions of their agents and
 12 representatives with respect to the matters alleged in the complaint.

13 AS A FIFTEENTH AFFIRMATIVE DEFENSE, defendants are informed and believe
 14 that if plaintiffs' damages, if any, were the fault of the negligence, if any, of other parties to
 15 this action, defendants are informed and believe that these answering defendants' liability is
 16 limited to its percentage share of liability, if any, which liability is expressly denied and
 17 contested, subject to Civil Code Section 1431, et seq. (The California Fair Responsibility Act
 18 of 1986)

19 AS A SIXTEENTH AFFIRMATIVE DEFENSE, defendants are informed and believe
 20 that if there are persons and entities, both named and unnamed in the complaint herein, who
 21 either are or may be legally and proximately responsible for plaintiffs' alleged damages, if any,
 22 defendants request that this Court determine the nature and extent of said fault by other parties
 23 and determine a proper allocation of the same between these parties for the purpose of
 24 permitting equitable contribution among these parties toward any judgment recovered by the
 25 complaint pursuant to the rule of American Motorcycle Association v. Superior Court.

1 AS A SEVENTEENTH AFFIRMATIVE DEFENSE, defendants are informed and
 2 believe that plaintiffs lacks standing to bring the claims alleged in the complaint in that they
 3 are not persons aggrieved by the violations alleged.

4 AS AN EIGHTEENTH AFFIRMATIVE DEFENSE, defendants are informed and
 5 believe that the relief and modifications that plaintiffs seek to impose would require
 6 construction, alteration, or structural modification of the subject premises which are not
 7 readily achievable.

8 AS A NINETEENTH AFFIRMATIVE DEFENSE, defendants are informed and
 9 believe that the relief sought by plaintiffs, including the architectural, communications, and
 10 structural modifications sought, would cause an undue hardship on defendants.

11 AS A TWENTIETH AFFIRMATIVE DEFENSE, defendants are informed and
 12 believe plaintiffs' claims are barred in whole or in part because plaintiffs failed to exhaust
 13 their administrative remedies pursuant to, among other things, 42 U.S.C. § 2000a-3(c) and
 14 Cal. Govt. Code § 12948.

15 AS A TWENTY-FIRST AFFIRMATIVE DEFENSE, defendants are informed and
 16 believe that plaintiffs' claims are in whole or in part moot.

17 WHEREFORE, defendants pray for judgment as follows:

- 18 1. That plaintiffs take nothing;
- 19 2. For costs of suit including reasonable attorney's fees; and
- 20 3. For such further relief that the Court deems just and proper.

21 Dated: December 22, 2007

STEYER LOWENTHAL BOODROOKAS
 ALVAREZ & SMITH LLP

22
 23 By: /s/ Edward Egan Smith
 24 Jeffrey H. Lowenthal
 25 Edward Egan Smith
 26 Jessica C. Grannis
 27 Attorneys for Defendant Attorneys for
 Defendants Landmark Towne Center,
 LLC; Aglos, LLC; Dinky, LLC and; GF
 Liberty, LLC

1 **DEMAND FOR JURY TRIAL**

2 Defendants Landmark Towne Center, LLC; Aglos, LLC; Dinky, LLC and; GF Liberty,
3 LLC hereby demand a trial by jury of all issues in the present action to which they are entitled
4 to a trial by jury.

5 Dated: December 22, 2007

6 STEYER LOWENTHAL BOODROOKAS
7 ALVAREZ & SMITH LLP

8 By: /s/ Edward Egan Smith

9 Jeffrey H. Lowenthal

10 Edward Egan Smith

11 Jessica C. Grannis

12 Attorneys for Defendant Attorneys for
13 Defendants Landmark Towne Center,
14 LLC; Aglos, LLC; Dinky, LLC and; GF
15 Liberty, LLC

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6 Attorneys for Defendants
7 Landmark Towne Center, LLC; Aglos, LLC; Dinky, LLC and; GF Liberty, LLC
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10 **UNITED STATES DISTRICT COURT**
11
12 **NORTHERN DISTRICT OF CALIFORNIA**

13 NICOLE MOSS, an individual; and) CASE NO. C06-6356
14 DISABILITY RIGHTS, ENFORCEMENT,)
15 EDUCATION, SERVICES: HELPING)
16 YOU HELP OTHERS, a California public) CERTIFICATE OF SERVICE
17 benefit corporation)
18 Plaintiffs,)
19 vs.)
20 MANILA BAY CUISINE; LANDMARK)
21 TOWNE CENTER, LLC, a Delaware)
22 limited liability company; AGLOS, LLC, a)
23 Delaware limited liability company;)
24 DINKY, LLC, a Delaware limited liability)
25 company; GF LIBERTY, LLC, a Delaware)
26 limited liability company; CRIM SUN,)
27 INC., a California corporation,)
28 Defendants.)
-----)

CERTIFICATE OF SERVICE

Case No. C 06-6356

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CERTIFICATE OF SERVICE

I declare that I am over the age of eighteen years and that I am not a party to this action. I am an employee of Steyer Lowenthal Boodrookas Alvarez & Smith LLP, and my business address is One California Street, Suite 300, San Francisco, CA 94111.

On the date set forth below, I served the following document(s):

ANSWER TO PLAINTIFF'S COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES

- [x] by sending the true copies thereof as designated below:
- [x] by placing [] the original [x] a true copy thereof enclosed in sealed envelopes addressed as follows:

Thomas E. Frankovich
2806 Van Ness Avenue
San Francisco, CA 94109
Telephone (415) 674-8600
Fax (415) 674-9900
[Attorney for Plaintiffs]

Nathan Paco
Law Offices of Nathan Paco
1419 Burlingame Ave., 2nd Floor
Burlingame, CA 94010
Telephone (650) 343-1371
Fax (650) 343-7979
[Attorneys for Defendants
Crimsun, Inc. dba Manila Bay Cuisine]

[x] **BY MAIL.** I am readily familiar with my firm's practice for collection and processing of correspondence for mailing with the U.S. Postal Service, to wit, that correspondence will be deposited with the U.S. Postal Service this same day in the ordinary course of business. I sealed said envelope and placed it for collection and mailing following ordinary business practices.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 22, 2006, at San Francisco, California.

/s/ Elizabeth R. Costiniano

CERTIFICATE OF SERVICE

Case No. C 06-6356

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